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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 35 ORIGINAL

UNITED STATES OF AMERICA,
Petitioner,

v.

STATE OF MAINE, *et al.*,
Defendants.

MOTION AND BRIEF OF ASSOCIATED GAS DISTRIBUTORS AS *AMICUS CURIAE*

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STATE OF MAINE, *et al.*,
Defendants.

MOTION OF ASSOCIATED GAS DISTRIBUTORS FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

Pursuant to Rule 42 of the United States Supreme Court, Associated Gas Distributors (AGD) respectfully moves this Court for leave to file the accompanying ***amicus curiae*** brief in the case ***U.S. v. Maine***.

AGD is an unincorporated association of approximately fifty natural gas distribution companies serving approximately 11 million consumers in the twelve defendant states herein. Attached as Appendix A hereto is a listing of the AGD membership.

AGD's member companies have been severely injured by the domestic natural gas shortage, a shortage which is expected to grow even more serious as it reaches into the future. Natural gas obtained from the Atlantic seabed and subsoil could greatly alleviate this shortage, particularly in these twelve Atlantic coast states.

In its Brief on Exceptions to the Special Master's Report, the Common Counsel States assert that it makes little difference whether oil and gas exploration and development takes place under Federal or state auspices. Also, the Special Committee on Tidelands of the National Association of Attorneys General filed an ***amicus curiae*** brief alleging adverse environmental, economic and social consequences as a result of offshore energy recovery programs. AGD submits that its brief ***amicus curiae*** is necessary herein both to show how the precise jurisdictional issue decided by the Special Master and under review herein will have a tremendous impact on the timing and nature of offshore natural gas exploration and development, and to discuss the environmental, economic and social impact of the natural gas shortage, with particular emphasis on its effect upon the twelve defendant states.

It is AGD's position that a final decision by this Court in the above-captioned matter will have a direct impact upon the prompt development of the natural gas resources underlying the areas in dispute. AGD respectfully requests that this Court, in entering its order resolving the jurisdictional disputes among the several Atlantic states and the United States, take into account the vital and pressing need which AGD members and the American natural gas consumer has for the prompt development of the natural gas resources underlying the Atlantic Outer Continental Shelf, and take whatever measures it deems necessary for a prompt resolution of all boundary disputes in the Atlantic Outer Continental Shelf area.

From the previous pleadings and briefs which have been filed with this Court and with the Special Master, AGD has no reason to believe that the important questions regarding the effect of this Court's decision herein upon those gas companies and their consumers who would benefit from the prompt development of natural gas resources from the Atlantic Outer Continental Shelf will be adequately presented by any other party to this litigation.

In accordance with Rule 42, AGD has requested from all parties their consent to the filing of this ***amicus curiae*** brief; however, the consent of Brice M. Clagett, Esquire, counsel

for nine of the defendant states, has been refused. Wherefore, AGD respectfully requests permission of the Supreme Court for leave to file a brief of an ***amicus curiae***.

Respectfully submitted,

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Defendants.

BRIEF FOR ASSOCIATED GAS DISTRIBUTORS AS *AMICUS CURIAE*

Associated Gas Distributors (AGD) hereby submits its Brief as an ***amicus curiae*** in the proceeding ***U.S. v. Maine***, No. 35 Orig. (October Term, 1974), answering the exceptions to the Report of the Special Master, issued herein on August 27, 1974.

REPORT BELOW, JURISDICTION AND STATUTES INVOLVED

On April 1, 1969, the United States filed in this Court a Motion for leave to file a complaint against the thirteen states bordering on the Atlantic Ocean. Original jurisdiction of this Court was invoked under Article 3, Section 2, Clause 2 of the Constitution of the United States and 28 U.S.C. §1251(b)(2)(1970). On June 16, 1969, this Court granted the Motion of the United States, 395 U.S. 955, and its complaint

was formally filed.

On June 8, 1970, this Court entered an Order directing Special Master Albert B. Maris to take evidence in this proceeding and submit any report as he may deem appropriate. On August 27, 1974, Judge Maris issued his report upholding the claim of the United States that it has the right to explore and exploit the natural resources of the seabed and subsoil of that portion of the Continental Shelf underlying the Atlantic Ocean which is more than three geographical miles seaward from the coastline of the United States.

Since this is a territorial dispute between the United States Government and twelve Atlantic coast states, there is no particular statutory framework for this cause of action. However, the Submerged Lands Act of 1953, 43 U.S.C. §1301-43 (1970), is involved in this proceeding to a certain extent. AGD also believes that the Natural Gas Act, 15 U.S.C. §§717, 717a-w (1970), should be given some consideration by the Court in its decision.

QUESTION PRESENTED

In light of its impact upon the timing and nature of exploration and development of natural gas resources contained in the seabed and subsoil in the Atlantic Outer Continental Shelf, should this Court's decision take into account the pressing need for the rapid exploration and development of such resources which is necessary to alleviate the present and continuing natural gas shortage on the East Coast and nationwide?

ARGUMENT

I. AGD Members, Their Customers and All American Natural Gas Consumers Have a Vital and Pressing Need For the Natural Gas Which Can Be Obtained from the Atlantic Seabed and Subsoil.

AGD is a non-profit association of natural gas distribution companies serving nearly 11 million consumers in the twelve states which presently are defendants in this

litigation.[1] Since the inception of its organization in the early 1960's, AGD has sought adequate natural gas supplies, at a just and reasonable price, in numerous proceedings before the Federal Power Commission (FPC). AGD has participated in each FPC area rate proceeding, both at the FPC and in the courts, from the first Permian Basin Area rate proceeding[2] through the second Southern Louisiana rate decision.[3]

In recent years, the once-adequate U.S. supply of natural gas has deteriorated substantially, and a nationwide natural gas shortage presently exists, as this Court has recognized on several occasions.[4] This natural gas shortage is deepening at a rapid pace. Interstate natural gas pipelines have reported to the FPC they anticipate an overall curtailment of more than 919 million Mcf, or 12.87 percent of these pipelines' firm requirements, during the present winter or heating season. These projected curtailments are more than double the actual curtailments of the past winter.[5] The FPC estimates that the demand for natural gas will amount to 45.3 trillion cubic feet by 1990, but that, because of the natural gas shortage, only 26 trillion cubic feet will be consumed during that year.[6]

The east coast of the United States will be particularly hard hit by this natural gas shortage. There are no sizeable gas deposits located on the mainland of this region. East coast gas consumers derive the bulk of their supply from cross-country pipelines, which cannot compete with intrastate purchasers in

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[1] This Court granted the Motion of the State of Florida for severance of the cause of action against it. 403 U.S. 949 (1971).

[2] *Aff'd. Permian Area Rate Case*, 390 U.S. 747 (1968).

[3] *Aff'd. Mobil Oil Corp. v. FPC*, 417 U.S. 283 (1974).

[4] *FPC v. Texaco, Inc.*, 417 U.S. 380, 400 (1974); *Mobil Oil Corp. v. FPC, supra* at 304; *FPC v. Louisiana Power & Light Co.*, 406 U.S. 621 (1972).

[5] Bureau of Natural Gas, Federal Power Commission, Requirements and Curtailments of Major Interstate Pipeline Companies based on Form 16 Reports Required To Be Filed on September 30, 1974 (1974).

[6] 1 Federal Power Commission, National Gas Survey, Ch. 6 at 38; Ch. 7 at 5 (Preliminary draft issued in advance of Commission Approval 1974).

the Southwest and West for the dwindling volumes of new natural gas available from on-shore sources.[7] The dramatic energy shortage, particularly the natural gas shortage in the eastern region of this country, has led Federal Energy Assistant Administrator Duke R. Ligon to conclude, "There is no question but that the development of offshore oil and gas could significantly relieve the burden of energy dependence experienced by consumers on the East Coast."[8]

In its ***Amicus Curiae*** Brief, the Special Committee on Tidelands of the National Association of Attorneys General (Tidelands Committee) has discussed certain environmental, economic and social ramifications of offshore resource development upon coastal states. AGD, whose members serve the public in the coastal states immediately affected by this litigation, submit there are environmental, economic and social ramifications ***of the natural gas shortage*** as well. It is well-recognized that natural gas is the most pollution-free and most efficient fossil fuel from the point of production to the point of consumption. The generation of electricity for home heating involves the production of some 6,000 times as much sulfur oxides (air pollution) per single family dwelling as does the on-site consumption of gas to provide the same energy. Natural gas is nearly three times as efficient in heating homes and water as coal, converted to electric power, and considerably more efficient than fuel oil, which is also in

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[7]The interstate pipelines' inability to compete with intrastate purchasers results from the fact that wellhead prices for natural gas destined for interstate commerce are regulated by the FPC, ***Phillips Petroleum Co. v. Wisconsin,*** 347 U.S. 672 (1954), while regulation of intrastate sales of natural gas is prohibited under Section 1(b) of the Natural Gas Act. During this period of a supply shortage, the unregulated market is able consistently to outbid the regulated market. See ***Permian Basin Area Rate Cases, supra.***

[8]Statement of Federal Energy Assistant Administrator Duke R. Ligon at the Hearings on Proposed Procedures for OCS Leasing before the Subcomm. on Administrative Practices and Procedures of the Senate Comm. on the Judiciary, 93d Cong., 2d Sess. (Oct. 7, 1974).

short supply.[9] Any conversion by natural gas users to alternate fuels or limitations on gas service to new residences, office buildings, and industries traditionally served with natural gas will result in a substantial loss of energy efficiency and greater emissions of pollutants into the nation's atmosphere.

The natural gas shortage is also causing severe economic and social problems. Natural gas accounts for some 30 percent of the nation's annual energy consumption and represents some 50 percent of energy used for non-transportation purposes.[10] Many industries depend upon natural gas as a primary or sole fuel in all or a portion of their operations. The textile, petrochemical and fertilizer industries are all highly dependent upon natural gas as an energy source, and these industries have already been adversely affected by the natural gas shortage. Moreover, there are indications that the natural gas shortage has or may cause substantial unemployment in certain areas throughout the United States. For example, the lack of natural gas threatens the employment of 25,000 workers in New Jersey, 80,000 workers in Connecticut and 90,000 workers in New York, three states served by AGD members who are also defendant states herein.[11]

The potential wealth of energy resources, particularly natural gas resources, contained in the seabed and subsoil of the American Continental Shelf[12] off the Atlantic Coast

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[9]National Gas Survey, ***supra*** note 6, Ch. 2 at 9-11; ***see also*** Staff of Senate Comm. on Interior and Insular Affairs, 93d Cong., 2d Sess., Working Paper of the Natural Gas Production Act of 1974 VI (Comm. Print 1974).

[10]National Gas Survey, ***supra*** note 6, Ch. 6 at 37-52.

[11]Prepared Statement of Federal Energy Administrator John C. Sawhill at the Oversight Hearings on Natural Gas Curtailment before the Senate Commerce Committee, 93d Cong., 2d Sess. (Aug. 20, 1974).

[12]Pursuant to the so-called Truman Proclamation, 59 Stat. 84 (September 28, 1945), the United States has claimed jurisdiction and control over the natural resources of the seabed and subsoil of the Continental Shelf contiguous to the coast of the United States. (Special Master's Report at 68-69).

presents a major opportunity to abate the natural gas crisis which this nation currently faces. Government studies estimate that potential production from the entire Atlantic Shelf area is between 55 trillion and 110 trillion cubic feet of natural gas.[13] Recognizing the need to overcome our present energy shortages and to decrease our dependence upon foreign sources, the Federal Government has announced plans for extensive new leasing of six Outer Continental Shelf areas, one of which is the Atlantic coast, in the next four years.[14] The day before this announcement, President Ford personally expressed the need for accelerated programs for the exploration and development of offshore oil and gas resources:

> "I believe that the Outer Continental Shelf oil and gas deposits can provide the largest single source of increased domestic energy during the years when we need it most . . . We must proceed with the program that is designed to develop these resources."[15]

However, the Federal Government has estimated that, ***without any further court delays***, it will take a minimum of five years before energy production from the Atlantic Outer Continental Shelf could commence.[16] Any decision concerning jurisdiction over the Atlantic seabed and subsoil

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[13] United States Geological Survey, U.S. Dep't. of the Interior, U.S. Petroleum and Natural Gas Resources (1974). These figures compare with the 250 trillion cubic feet estimated proved natural gas reserves remaining in the U.S. at year end 1973.

[14] Bureau of Land Management, U.S. Dep't. of the Interior, News Release, November 14, 1974. Atlantic offshore lease sales are presently scheduled for December, 1975, May and July, 1976, July and December, 1977, and May, 1978.

[15] Text of Remarks by the President at a Meeting of Governors on OCS Oil and Gas Development, 10 Weekly Compilation of Presidential Documents 1440 (Nov. 13, 1974).

[16] Statement of Secretary of Interior Rogers C.B. Morton at the Hearings on the Outer Continental Shelf Oil and Gas before the Subcomm. on Immigration, Citizenship and International Law of the House Comm. on the Judiciary, 93d Cong., 2d Sess., Ser. No. 93-31, at 8 (1974).

must take into account the urgent need to develop the energy contained in this region as soon as possible.

II. This Court's Resolution of the Territorial Dispute Between the Federal Government and the Atlantic Coastal States May Well Have a Momentous Impact Upon the Timing and Nature of Offshore Natural Gas Exploration and Development.

In its Brief on Exceptions, the Common Counsel States assert it makes little difference whether the state or Federal Government owned the Atlantic Continental Shelf, for petroleum exploration will almost certainly be carried on by private parties in any event (Br. 23; App. 10). This is a naive analysis of Federal-state jurisdiction in the regulation of the petroleum industry, particularly the natural gas industry. Federal or state ownership could make a substantial difference in the timing and the general course of offshore gas exploration and development. AGD takes no position on the question of whether the Federal Government's or the states' territorial claims should be upheld; nonetheless, we urge this Court to recognize and consider the impact which this territorial or jurisdictional decision may have upon exploration and production activities.

The Court's decision herein will establish whether the several states or the Federal Government will regulate the development of the resources from the Atlantic seabed. It will also determine whether the producers and transporters of such resources must look to the Federal Government or the governments of the various states for licenses to move these resources to market. Under Section 1 of the Natural Gas Act, the sale and transportation of natural gas which crosses state lines or comes from a Federal domain into a state is regulated by the FPC; intrastate sales of natural gas are not regulated at the Federal level. An expeditious and definitive ruling herein, setting forth the precise boundaries between the states and the Federal domain is essential if the Special Master's Report is adopted in whole or in part by this Court. Without certainty as to the locus of licensing authority, the sizeable capital commitments necessary to transport the energy to market will not be made.

An expeditious and definitive boundary ruling is also necessary if it is found that the various states have jurisdiction

over the Atlantic Outer Continental Shelf. Under such a decision, the proper offshore boundaries between adjacent states must be determined for the entire extension of the Atlantic Outer Continental Shelf.[17] These determinations, not now before the Court, will be required at an early date. Gas producers must know which state(s) exercises authority over a particular offshore tract, and the transporters must know whether their transmission lines will cross state boundaries, subjecting them to FPC jurisdiction.

This Court's decision may also have an impact on the information to be developed in preparation for the leasing, exploration and development of offshore gas reserves. While a large number of seismic and geophysical studies have been made on the Atlantic Shelf, no exploratory drilling of any kind has occurred. Exploratory drilling is necessary to furnish accurate oil and gas reserves data, which are relied upon to support the tremendous financial investment entailed in offshore drilling and transportation programs. In the past, private industry has undertaken all exploratory activity in other offshore areas. However, many public officials have recommended that the Federal Government, through the United States Geological Survey, become directly responsible for exploration activity on the Outer Continental Shelf, so that the Government-lessor will have more accurate information concerning the value of offshore tracts before taking bids from the oil companies to lease offshore areas.[18]

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[17]To cite just one example, is Long Island considered as a part of New York State in drawing up that State's Outer Continental Shelf boundaries, and if so, how are these boundaries to be drawn *vis-a-vis* New York's "neighboring" offshore states of Connecticut, New Jersey, Rhode Island and Massachusetts?

[18]National Ocean Policy Study of Senate Comm. on Commerce, 93d Cong., 2d Sess., Outer Continental Shelf Oil and Gas Development and the Coastal Zone 6, 23 (Comm. Print 1974). Such a recommendation was also contained in the Energy Supply Act of 1974, which was passed by the Senate on September 18, 1974, but was not acted upon in the House of Representatives, S.3221, 93d Cong., 2d Sess. §19 (1974). This bill will in all likelihood be reintroduced in the 94th Congress.

If this Court decides that jurisdiction over the Atlantic seabed and subsoil lies with the various states, it is unlikely that the United States Geological Survey will be able to undertake exploratory drilling. Even if it is so able, the various states may also wish to undertake exploratory activities of their own. Obviously, an expeditious and definitive resolution of all boundary disputes related to this case will help determine which agencies of which jurisdictions will be able to undertake exploratory drilling.

Finally, the Court's decision may determine whether the Coastal Zone Management Act of 1972, 16 U.S.C. §§1451-64 (Supp. III, 1973), will have a substantial dilatory impact upon the exploration and development of the resources contained in the Atlantic seabed and subsoil. Section 304 of that Act defines "coastal zone" as encompassing the land therein and thereunder, but excludes lands the use of which is by law subject solely to the discretion of, or which is held in trust by, the Federal Government, its officers or agents. Section 307(c)(3) of the Act requires that any applicant for a Federal license or permit conducting an activity "affecting the coastal zone" must certify that it is consistent with the coastal zone management program of the affected state(s).[19] The applicant must notify the state of its proposed activity, and the state may then object to the grant of a Federal license or permit. No license or permit may be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certificate or until other conditions are met.[20]

The Court's decision herein will in all probability affect

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[19]Section 305 provides for the establishment of such management programs, which must be approved by the Secretary of Commerce.

[20]By the state's failure to act, concurrence is conclusively presumed, unless the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of the Act or is otherwise necessary in the interest of national security.

the definition of "coastal zone" in the Coastal Zone Management Act of 1972, which could have severe consequences for the exploration and development of Atlantic offshore gas resources. An expeditious and definitive determination of this case is essential because Atlantic states must establish coastal zone management programs for their entire "coastal zones." In addition, the natural gas industry, in planning any future Atlantic offshore operations, must know how offshore leasing, exploration and development and transportation of gas to the mainland will be affected by this Act.

III. Relief Sought.

AGD members have filed this Brief as ***amicus curiae*** herein so that this Court will (a) take into consideration the vital need which AGD members and American natural gas consumers have for the natural gas contained in the Atlantic seabed and subsoil in rendering its decision; and (b) take such action and issue such orders as are necessary to resolve all boundary and jurisdictional disputes in the Atlantic Outer Continental Shelf, so that the leasing, exploration and development of Atlantic offshore areas may be reliably planned and begun as soon as possible. AGD urges this Court to retain jurisdiction over this case until all boundary disputes in the Atlantic Outer Continental Shelf are definitively resolved. This can be done in part by requiring the parties to submit a decree to implement the Court's decision herein, as has been done in similar cases.[21] AGD further suggests that the Court hold further hearings or take whatever other action it deems necessary to resolve finally and definitively all boundary issues pertaining to the seabed and subsoil in the offshore Atlantic area. In ***U.S. v. California, supra*** note 21, this Court was also presented with a seemingly simple jurisdictional issue. However, the Court wisely foresaw the wide-ranging boundary ramifications of its decision, stating:

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[21] ***U.S. v. Louisiana***, 363 U.S. 1, 85 (1960); ***U.S. v. Texas***, 339 U.S. 707, 720 (1950); ***U.S. v. Louisiana***, 339 U.S. 699, 706 (1950); ***U.S. v. California***, 332 U.S. 19, 41 (1947).

> "And there is no reason why, after determination in general who owns these three-mile belt here involved, the Court might not later, if necessary, have more detailed hearings in order to determine with greater definiteness particular segments of the boundary... Such practice is commonplace in actions similar to this which are in the nature of equitable proceedings." (at 26)

This case is also in the nature of an equitable proceeding, so that the Court may take whatever measures it deems necessary to resolve promptly all boundary disputes to expedite the development of offshore gas resources for use on the East Coast and nationwide.

CONCLUSION

Because of the potential consequences of the Court's decision herein, AGD respectfully requests that the Court retain jurisdiction over this case until all boundary disputes are definitively resolved, and if necessary, establish a forum for the expeditious resolution of such disputes. Further, the Court should carefully consider the need of the American consumer for the urgent development of the natural gas resources contained in the seabed and subsoil of the Continental Shelf underlying the Atlantic Ocean in rendering any decision upon the jurisdictional issues presented.

Respectfully submitted,

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December 30, 1974

APPENDIX

APPENDIX A

ASSOCIATED GAS DISTRIBUTORS

Atlanta Gas Light Company

Bay State Gas Company, The Berkshire Gas Company, Boston Gas Company, Bristol and Warren Gas Company, Cape Cod Gas Company, City of Holyoke, Massachusetts, Gas and Electric Department, City of Westfield Gas and Electric Light Department, Commonwealth Gas Company, Concord Natural Gas Corporation, The Connecticut Gas Company, Connecticut Natural Gas Corporation, Fall River Gas Company, Fitchburg Gas and Electric Light Company, Gas Service, Inc., The Hartford Electric Light Company, Haverhill Gas Company, Lawrence Gas Company, Lowell Gas Company, Manchester Gas Company, New Bedford Gas and Edison Light Company, The Newport Gas Light Company, North Attleboro Gas Company, Northern Utilities, Inc., The Pequot Gas Company, Providence Gas Company, South County Gas Company, Southern Connecticut Gas Company, Tiverton Gas Company and Valley Gas Company (jointly)

The Brooklyn Union Gas Company

Central Hudson Gas and Electric Corporation

Consolidated Edison Company of New York, Inc.

Elizabethtown Gas Company

Long Island Lighting Company

New Jersey Natural Gas Company

New York State Electric & Gas Corporation

North Carolina Natural Gas Corporation

Philadelphia Electric Company

Philadelphia Gas Works

Piedmont Natural Gas Company, Inc.

Public Service Company of North Carolina, Inc.

Public Service Electric and Gas Company

Rochester Gas and Electric Corporation

UGI Corporation

Washington Gas Light Company

CERTIFICATE OF SERVICE

I, Frederick Moring, an attorney for the party aforementioned, hereby certify that I have served a copy of the foregoing Motion and Brief as ***Amicus Curiae*** upon the parties to this action by delivering a copy of the same by air mail special delivery to the attorneys of record for such parties.

This 30th day of December, 1974.

Frederick Moring